

# China's Anti-Secession Law and Developments Across the Taiwan Strait

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Mr. Chairman and other distinguished members of the Subcommittee, thank you for inviting me to testify today. I am honored to have the opportunity to speak to you about Beijing's adoption of an anti-secession law aimed at Taiwan.

In my remarks I will offer my analysis of why the law was adopted in March 2005 despite recent improvements in relations across the Taiwan Strait. I will also discuss how the law might affect relations across the Taiwan Strait, and what challenges lie ahead for U.S. policy toward Taiwan and mainland China. Some of my comments will be based on interviews with government and academic experts on a research trip to Taiwan, Shanghai, and Beijing in January of this year.

## **A Puzzle: Why did Beijing adopt the Anti-Secession Law when relations across the Taiwan Strait appeared to be improving?**

The adoption of the Anti-Secession law in March 2005, particularly its timing, provides a puzzle for analysis of relations between Taiwan and mainland China. The law added very little, if anything, new to Beijing's publicly stated policies toward Taiwan. So, it is not entirely clear what exactly Beijing gains by its passage. Moreover, passage of the law carried costs. The law created negative reactions in Taiwan, the United States, and the European Union, where observers understandably focused on the portions of the law that threatened Taiwan with "non-peaceful" measures if the government in Taipei were to move the island toward permanent political separation from the Chinese mainland. What is most puzzling of all, the law was passed at a time when Beijing seemed to be making some progress in its diplomacy toward Taiwan, the United States, and the European Union on issues related to cross-Strait relations. The law then seemed like the wrong measure at the wrong time.

### *The Law Offers Little that Is Fundamentally New*

The anti-secession law threatens Taiwan with "non-peaceful" measures if Taipei takes actions that create either the trappings of legal independence or conditions that would permanently preclude peaceful unification across the Taiwan Strait. On this score, the anti-secession law says nothing new. Beijing has long held out the prospect of the use of force against Taiwan for these reasons. The Anti-Secession Law merely repeats these

threats, albeit in a high profile manner.<sup>1</sup> The law, which was passed by the National People's Congress (NPC), explicitly states that decisions for the use of force will ultimately be made by the State Council and Central Military Commission.<sup>2</sup> So it is not clear how passage of the law in the NPC really makes the threat of force seem any more compelling than it would have been without the passage of such a law.

The law is not simply a series of threats. Indeed the law contains several moderate and potentially positive elements. These more accommodating sections themselves, however, are not fundamentally new. Rather, they repeat Beijing's oft-stated goal of "peaceful unification" across the Taiwan Strait. As Beijing has done in the past, the law encourages increased economic, cultural, and social contacts with Taiwan for the purpose of promoting such an outcome. Beijing continues to hold out the prospect of political talks across the Taiwan Strait but reiterates that peaceful unification is Beijing's ultimate goal in such talks and that this goal can only be accomplished through Taiwan's acceptance of the "one China" principle. In what might be its most moderate passage, the anti-secession law promises equal status for the mainland and Taiwan in negotiations. This promise reiterates a relatively flexible formulation offered by Vice-Premier Qian Qichen three years ago. Treating Taiwan and the mainland as equal parts of one China is preferred by many in Taiwan to the PRC's traditional "one country, two systems" formula. That formula is rejected across the political spectrum in Taiwan and is conspicuous in its absence in the anti-secession law.

*Why the Anti-Secession Law is a source of tension, not stability*

Regardless of these more moderate sections of the law, it is natural for people on Taiwan and elsewhere to focus on the threatening aspects of the law. This is particularly true given the apparent relaxation in cross-Strait relations in the weeks before the law's passage. In this sense, perhaps the most negative aspect of the anti-secession law is simply its adoption at a time when cross-Strait relations seemed to be thawing and political trend lines on the island seemed to be moving in the mainland's favor.

In the Legislative elections in Taiwan in December 2004 traditionally pro-independence or "pan-Green" parties failed to gain a majority in the Legislative Yuan. Many in Taiwan, the United States, and Beijing had predicted that the pan-Green alliance would prevail over the "pan-Blue" parties, who are proponents of more accommodating policies toward the mainland and who generally oppose constitutional changes that touch upon sovereignty issues. So the maintenance of a pan-Blue majority in the Legislative Yuan was a pleasant surprise for Beijing. The election results were considered particularly important in Beijing because constitutional revisions are scheduled for Taiwan in 2005-2008. Moreover, following the elections in Taiwan, in January 2005 the mainland and

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<sup>1</sup> Article eight of the law offers three rather vaguely specified conditions that might trigger "non-peaceful measures" toward Taiwan. Those conditions all refer to pro-independence political activities on the island that would seem to create legal independence from China for the island, move Taiwan sharply in the direction of such legal independence, or permanently preclude any prospect of peaceful unification between the mainland and Taiwan.

<sup>2</sup> A full English translation of the law can be found in the March 14, 2005 edition of *China Daily*.

Taiwan reached agreement on direct cross-Straits charter flights for the Chinese New Year. So, it seemed that there was somewhat of a thaw in cross-Straits relations precisely when the offending law was passed.

The law was also passed at a time when it appeared that Washington was acting to restrain pro-independence forces on Taiwan. The United States had publicly distanced itself from various statements and actions of President Chen Shui-bian during the legislative election campaign in late 2004. This policy was apparently quite effective. One popular explanation in both Taiwan and the mainland for the pan-Green parties' difficulties in the Legislative Yuan election was that the Bush Administration publicly critiqued President Chen's actions during the campaign. The strain that President Chen's campaign rhetoric was putting on U.S.-Taiwan relations apparently alienated moderate swing voters in Taiwan from pan-Green candidates.<sup>3</sup> So, Beijing had real reason to be pleased with recent developments not only in Taiwan politics but also in U.S.-PRC relations on the Taiwan issue. Despite these developments, Beijing adopted a law that CCP elites knew in advance would be seen in a very negative light in Washington and Taipei.<sup>4</sup>

Finally, before the anti-secession law was passed, the European Union seemed poised to end its embargo on arms sales to the People's Republic of China (PRC). Lifting of the embargo was already a controversial issue inside Europe, especially because of pressure by the Bush Administration and the United States Congress to maintain the embargo. Some Europeans apparently were prepared to lift the embargo in part because they did not treat seriously the prospect of cross-Straits military conflict. By publicly reminding the world of the PRC's willingness to adopt "non-peaceful" measures to prevent Taiwan's permanent separation from the mainland, Beijing tipped the political balance in Europe on the question of the embargo, thereby keeping it in place at least for the time being.

For all of these reasons, then, the anti-secession law seems like the wrong measure at the wrong time. This is true regardless of whether or not one finds the document to be relatively moderate compared to previous threats against Taiwan. Why, then, did the Chinese Communists insist on adopting the law in March 2005?

### **Solving the Puzzle: Beijing's Long-Term Strategic Thinking, Domestic Politics, and the Unstoppable Momentum Behind the Anti-Secession Law in early 2005**

Since late 2003 the new PRC leadership under President Hu Jintao has been searching for a more effective way to halt or reverse what they believed were long-term political trends

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<sup>3</sup> According to pan-Blue and pan-Green members alike in Taiwan, Washington's cold response to Chen's rhetoric from October through December 2004 dissuaded swing voters from supporting pan-Green candidates at the polls. Many, it is believed, simply refused to vote. Turnout was 6-7% lower than pan-Green campaign managers had anticipated.

<sup>4</sup> The PRC floated the idea of an anti-secession law with Bush Administration leaders in early January 2005 during a trip by Director Chen Yunlin of the PRC State Council's Taiwan Affairs Office.

on Taiwan moving in the direction of Taiwan independence. There was frustration in Beijing that President Chen Shui-bian, former President Lee Teng-hui, and their respective pro-independence parties seemed to be gaining in popularity in Taiwan despite an increase in cross-Strait economic interdependence and a fast-paced build-up in the coercive military options available to the PRC. It was feared that many in Taiwan saw the mainland as a “paper tiger” and that one reason was that the mainland under President Jiang Zemin had been insufficiently pro-active in trying to shape the political environment in cross-Strait relations. Since he accepted the Presidency in March 2003 President Hu Jintao has fostered an image of pragmatism and effectiveness. His lack of experience on national security issues and his weak links to the military make it all the more important that he appear pro-active and relatively tough on Taiwan policy.

Avoiding failure on the Taiwan issue is considered critically important in Beijing not only for reasons of straightforward national security but also for the domestic political stability of the regime. Since the founding of the PRC in 1949, the CCP has portrayed itself as the only modern government that has enabled China to stand up to both external invaders and domestic forces bent on dividing the nation. The relative importance of this nationalist message grew in the 1980s and 1990s as other ideological messages about Maoist class struggle fell by the wayside in the reform era. In China no one seems to believe in communism any longer. Problems of corruption, income gaps between rich and poor, and environmental degradation all exacerbate the CCP elites’ concerns about domestic stability and regime legitimacy. In such a domestic environment, one major concern of top leaders in China is the potentially explosive nature of Chinese nationalism on certain emotional issues related to China’s “century of humiliation.” At the top of this list of emotional issues are the PRC’s relations with Taiwan and Japan, two policy issues on which Chinese elites are loath to appear weak and overly accommodating.

The fear within the CCP is not simply of inciting a spontaneous nationalist outburst against the government if Taiwan policy fails, but also of providing a high-profile political opportunity to segments of society already upset with the government for purely domestic reasons. Perceived failure on Taiwan policy could allow such groups to mobilize themselves against the government for allegedly patriotic reasons. Such protests could provide real challenges to the government, especially if elements of the civilian and military leadership were sympathetic to the protestors and angry at the top leaders for failing to defend national sovereignty and honor. The government does not want to find itself cracking down on explicitly patriotic movements that employ nationalistic slogans originally fostered by the government itself. Having attended the Asian Cup Soccer Final between Japan and China in Beijing in August 2004 and having witnessed the incredibly large number of police and paramilitary forces sent preemptively to the stadium to keep the peace, I believe the stated concerns of Chinese elites regarding fears of popular nationalism are likely sincere. They are probably not just arguments tactically deployed for foreign consumption.

The political transition in China may only intensify the perceived need for a tough policy toward Taiwan. Since maintaining domestic stability and improving China’s image abroad are core security goals of the Chinese Communist Party as a corporate whole,

individual leaders will likely try to protect their reputations for vigilance and toughness on these issues within the Party, especially during the transition. Since Hu Jintao does not have a proven track record of dealing with national security issues, it is particularly important for him to demonstrate strength and effectiveness on this issue as he consolidates his power.

According to my Chinese interlocutors in my January 2005 interviews, the idea of passing an anti-secession Law or a pro-unification law first gained real momentum in late 2003, during President Chen Shui-bian's re-election campaign in Taiwan. During that campaign President Chen suggested that he would rewrite the Republic of China's constitution in his second term, perhaps gaining approval for the new constitution by popular referendum. Especially given President Chen's statements regarding Taiwan's sovereign independence from mainland China, there was concern in Beijing (and in Washington) that the constitutional revision process and future referenda might touch upon issues related to Taiwan's sovereign status in relation to the mainland and, thereby, spark a cross-Strait conflict.

Mainland analysts became even more concerned when President Chen prevailed with just over 50% of the vote in that controversial March 2004 election. Although his majority was razor thin, it was still an improvement over the plurality that won him election in 2000 in a three-way race. Chen seemed to be getting more popular even as his platform seemingly became more oriented toward Taiwan independence. Despite a rather moderate and conciliatory inaugural speech in May, mainland analysts remained very wary of President Chen during summer 2004. Their concern would only grow later in the year when he seemed again to promote sovereign independence from mainland China in his public statements on the Republic of China's National Day (October 10). President Chen's statements in the weeks leading up to the December 11, 2004 Legislative Yuan elections were more pointed still. By stating energetically that "Taiwan is Taiwan" and proposing name changes for state-owned enterprises and Taipei's representative offices abroad, President Chen seemed dedicated to winning a "pan-Green" majority in the Legislative Yuan by appealing to pro-independence sentiments.

What was worse from their perspective, mainland analysts expected Chen to succeed in this campaign. The expectation of many analysts in Beijing in late 2004 was that the pan-Green candidates would likely gain many seats in the Legislative Yuan elections. It appeared that pro-independence sentiment in Taiwan was gaining momentum just as Taiwan moved into the process of revising the constitution in the period 2005-2008. Elites in Beijing believed, therefore, that they would need to make a political statement about their dedication to deterring Taiwan independence and promoting peaceful unification. According to my mainland interlocutors, it was in this strategic and domestic context in autumn 2004 that CCP leaders first circulated a draft outline for an anti-secession law to the thousands of National People's Congress (NPC) representatives.

The outcome of the December Legislative Yuan elections was a pleasant surprise for many PRC analysts. The Taiwan public showed more caution about President Chen's agenda than they had expected. As did many of their counterparts in Taiwan, mainland

analysts credited as a major contributor to the electoral outcome the Bush Administration's public distancing of itself from President Chen's campaign rhetoric and policy proposals. For example, just days before the Legislative Yuan elections, the Bush Administration criticized the proposals for "rectifying" the names of Taipei's representative offices and state-owned enterprises as unwelcome "unilateral changes to the status quo."<sup>5</sup> That term has become the Administration's catch-phrase for destabilizing provocations in cross-Straits relations.

Given the results of the Legislative Yuan elections and the perceived U.S. role in bringing that result to fruition, some Chinese interlocutors in January seemed to recognize that the situation across the Taiwan Strait was more relaxed and that the timing for an anti-secession Law was no longer right. In fact, some recognized that the law might prove to be counterproductive if adopted this year. To a person, however, the mainland analysts predicted correctly that a law would be passed anyway. Because the draft outlines had been distributed before the Legislative Yuan elections, for domestic political reasons, the anti-secession law's train had left the station. Mainland interlocutors posited that no CCP leader would want to be the one who proposed pulling the bill off the legislators' desks, regardless of the Taiwan election's outcome. Such a person would risk being seen as ineffective and weak on the Taiwan issue.

### **How Will the Law Affect Cross-Straits Relations and China's Foreign Relations?**

In addition to encouraging the European Union to maintain its arms embargo on China, the adoption of the law created negative reactions for Beijing in both the United States and Taiwan. The brief progress in relations between Taipei and Beijing symbolized by the direct charter flights for Spring Festival has apparently been halted. To date, however, there has been no intense spiral of tensions resulting from adoption of the law. In my opinion this is due in large part to the restraint shown by Washington and the moderation of President Chen himself in the face of domestic and international pressure to avoid escalating the conflict.

Washington was publicly quite critical of the law but remained relatively measured in its response. To the best of my knowledge, Bush Administration officials have avoided calling the passage of the law a "unilateral change in the status quo" across the Taiwan Strait. Instead the Administration criticized Beijing for raising tensions and for failing to seize on clear near-term opportunities to deepen cross-Straits cooperation and contacts. By criticizing the law, Washington expressed its disappointment in what was clearly a setback in cross-Straits relations. It also made clear its hope that Beijing might adopt more positive actions to improve cross-Straits relations. By eschewing overly dramatic language in response to the law the Bush Administration avoided sending signals of encouragement to those on Taiwan who saw the passage of the anti-secession law as an opportunity to adopt provocative counter-measures that could ratchet up cross-Straits tensions. For example, in January and February some elites in Taipei had floated the idea

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<sup>5</sup> See "Daily Press Briefing," U.S. State Department, December 6, 2004, at <http://www.state.gov/r/pa/prs/dpb/2004/39460.htm>.

of responding to an anti-secession law by adopting an “anti-annexation” law passed by popular referendum. Depending on its wording and the political context in which it was passed, an anti-annexation law might cross a mainland red-line regarding legal manifestations of independence or permanent legal impediments to peaceful unification. In my opinion, Washington was wise to avoid words and actions that might encourage such a response in Taipei.

To his own credit, President Chen has shown real moderation and leadership in his measured response to the law. Although Beijing predictably expressed its annoyance about the event, the protest march against the Anti-secession law in Taiwan on March 26 was peaceful and relatively low-key. Although he participated in the protest march, President Chen made no speech. He thereby resisted the temptation to make high-profile statements regarding Taiwan’s sovereignty that might have exacerbated cross-Strait tensions further.

Challenges remain on the near-term horizon, however. The visit to Beijing of a high-level entourage of the opposition KMT in the past week might seem a positive gesture toward Taiwan on Beijing’s part. However, the selective reaching out to one of the pan-Blue opposition parties and not to the members of President Chen’s government or his party might only increase tensions between Taipei and Beijing. Such an approach by Beijing might only further polarize Taiwan politics by encouraging President Chen and other members of the pan-Green parties to attack the KMT for selling out the country by appeasing the Chinese Communists. Such attacks could easily intensify as we approach the election of the National Assembly on May 14. At this early date it is still too soon to judge how the KMT-CCP meetings will affect politics in Taiwan and across the Taiwan Strait.

### **U.S. Policy toward Cross-Strait relations in the Future**

Especially since early 2002 Washington’s policies toward cross-Strait relations have been quite constructive and quite successful in limiting the likelihood of conflict across the Taiwan Strait. The Bush Administration has found a balanced approach between deterring mainland aggression against Taiwan on the one hand and dissuading Taiwan’s leaders from adopting policies that might provoke an otherwise avoidable conflict on the other. Washington’s policies have apparently not only affected the thinking of elites in Beijing and Taipei, but also the domestic context in which leaders in Taiwan must operate.

Finding this balance in U.S. foreign policy is not always easy and there will likely be many new challenges in the near future. In my opinion, in response to the recent KMT-CCP meetings, the United States should encourage Beijing to expand its outreach to the Taiwan government and to the ruling party in Taiwan, rather than just opposition parties. At the same time, the United States should discourage President Chen from responding to the meetings between KMT and CCP officials by promoting provocative policies toward the mainland.

In deterring the PRC from the use of force against Taiwan, Washington faces a challenge in balancing the two necessary aspects of any deterrence policy: credible threats of effective intervention if the target of the deterrent threat acts belligerently and credible assurances that the target's core interests will not be harmed if it refrains from belligerence. With a fast-paced increase in the military capacity of the PRC to coerce Taiwan, the United States has responded with offers of arms sales to Taiwan and increased defense coordination with the military in Taiwan. Such policies are generally appropriate, but they carry an unintended cost, especially given trends in Taiwan politics in the past several years. Many elites in Beijing tend to view these U.S. policies, especially increased defense coordination, as political signals that promote Taiwan independence by suggesting unconditional U.S. support to Taiwan. In other words these policies undercut the assurance part of the deterrence equation even as they bolster the credibility of threats of intervention. By publicly and repeatedly stating that the United States does not support Taiwan independence and by criticizing certain proposals by Taipei as unilateral changes in the status quo that are unwelcome in Washington, the United States helps reduce the political controversy regarding its defense policies toward Taiwan and thereby bolsters assurances that the goal of those defense policies is not to promote Taiwan independence. By balancing threats and assurances as part of its deterrence policy, Washington helps enhance Taiwan's security, avoids an unnecessary and avoidable great power conflict in the Asia-Pacific, and furthers American interests in peace, stability, and democracy in East Asia.